

**Exhibit 1 – ORACLE’S MOTION FOR REASSIGNMENT  
OF MATTERS TO MAGISTRATE JUDGE PEGGY A.  
LEEN and supporting declaration, filed in *Rimini v. Oracle*,  
Case No. 2:14-cv-01699-LRH-CWH**

BOIES, SCHILLER & FLEXNER LLP  
 RICHARD J. POCKER (NV Bar No. 3568)  
 300 South Fourth Street, Suite 800  
 Las Vegas, NV 89101  
 Telephone: 702.382.7300  
 Facsimile: 702.382.2755  
 rpocker@bsflp.com

BOIES, SCHILLER & FLEXNER LLP  
 STEVEN C. HOLTZMAN (*pro hac vice*)  
 BEKO O. REBLITZ-RICHARDSON  
 (*pro hac vice*)  
 1999 Harrison Street, Suite 900  
 Oakland, CA 94612  
 Telephone: 510.874.1000  
 Facsimile: 510.874.1460  
 sholtzman@bsflp.com  
 brichardson@bsflp.com

Attorneys for Counterclaimant Oracle  
 America, Inc. and Defendant and  
 Counterclaimant Oracle International Corp.

MORGAN, LEWIS & BOCKIUS LLP  
 THOMAS S. HIXSON (*pro hac vice*)  
 JOHN A. POLITO (*pro hac vice*)  
 NITIN JINDAL (*pro hac vice*)  
 One Market, Spear Street Tower  
 San Francisco, CA 94105  
 Telephone: 415.442.1000  
 Facsimile: 415.442.1001  
 thomas.hixson@morganlewis.com  
 john.polito@morganlewis.com  
 nitin.jindal@morganlewis.com

DORIAN DALEY (*pro hac vice*)  
 DEBORAH K. MILLER (*pro hac vice*)  
 JAMES C. MAROULIS (*pro hac vice*)  
 ORACLE CORPORATION  
 500 Oracle Parkway, M/S 5op7  
 Redwood City, CA 94070  
 Telephone: 650.506.4846  
 Facsimile: 650.506.7114  
 dorian.daley@oracle.com  
 deborah.miller@oracle.com  
 jim.maroulis@oracle.com

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

RIMINI STREET, INC.,  
 Plaintiff,  
 v.  
 ORACLE INTERNATIONAL CORPORATION,  
 Defendant.  
 ORACLE AMERICA, INC., *et al.*,  
 Counterclaimants,  
 v.  
 RIMINI STREET, INC., *et al.*,  
 Counterdefendants.

**And Related Cases**

**Case No. 2:10-cv-0106-LRH-VCF**

ORACLE USA, INC.; ORACLE AMERICA,  
 INC.; and ORACLE INTERNATIONAL  
 CORPORATION,  
 Plaintiff,  
 v.  
 RIMINI STREET, INC. and SETH RAVIN,  
 Defendants.

Case No. 2:14-cv-01699-LRH-CWH

**ORACLE'S MOTION FOR  
 REASSIGNMENT OF MATTERS TO  
 MAGISTRATE JUDGE PEGGY A.  
 LEEN**

**Case No. 3:16-CV-00543-LRH-CWH**  
  
COLBECK CAPITAL MANAGEMENT,  
  
Third-Party Movant,  
  
v.  
  
ORACLE INTERNATIONAL CORPORATION  
and ORACLE AMERICA, INC.,  
  
Respondents.

**MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES**

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**MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES**

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**NOTICE OF MOTION AND MOTION<sup>1</sup>**

Pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule 7-2, Counterclaimant Oracle America, Inc. and Defendant and Counterclaimant Oracle International Corporation (collectively “Oracle”) respectfully move the Court for an order reassigning this matter (“*Rimini I*”) to Magistrate Judge Peggy A. Leen.<sup>2</sup>

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On May 2, 2016, Chief Judge Navarro entered an order appointing W. West Allen, counsel for Rimini Street, Inc. and Seth Ravin, as Chairperson of the merit selection panel considering Judge Leen’s reappointment. Pursuant to Canon 3D of the Code of Conduct for United States Judges, Judge Leen ordered the parties to file a “statement of whether or not all parties agree to remittal.” ECF No. 217 at 2. Because the parties were unable to agree to remittal of Judge Leen’s interim disqualification, Judge Leen temporarily recused herself from this action and Magistrate Judge Carl W. Hoffman was appointed.

Oracle is advised that Judge Leen’s reappointment has been confirmed and the need for Judge Leen’s recusal has ended. Accordingly, Oracle respectfully requests that the Court reassign Judge Leen to this matter because reassignment would promote judicial economy and diminish the likelihood of inconsistent results, for several reasons.

<sup>1</sup> All “ECF” cites are to the *Rimini II* docket unless otherwise indicated.

<sup>2</sup> With this motion, Oracle also seeks reassignment of two related cases to Judge Leen: *Oracle v. Rimini*, Case No. 2:10-cv-00106 (D. Nev.) (“*Rimini I*”), and *Colbeck v. Oracle*, Case No. 3:16-cv-00543 (D. Nev.) (“Colbeck’s Motion to Quash”).

Regarding reassignment of *Rimini I*, there are several grounds supporting this request. First, the Court has already found that *Rimini I* and *Rimini II* are related cases and that judicial economy would be served by assigning both cases to Judge Hicks and Magistrate Judge Leen. See ECF No. 52. Second, all of the reasons outlined below apply equally, if not more so, to *Rimini I*: (i) Judge Leen has even more extensive experience adjudicating *Rimini I* which has been pending since 2010, and (ii) the current magistrate judge has not made any rulings in that case since Judge Leen’s temporary recusal. Third, there are still unresolved issues in *Rimini I* which may necessitate enforcement or other post-judgment proceedings. See *Rimini I*, ECF Nos. 1049 (granting Oracle’s motion for permanent injunction and awarding Oracle prejudgment interest and attorneys’ fees); 1072 (temporarily staying injunction pending a ruling on Rimini’s motion for a stay).

Regarding Colbeck’s Motion to Quash, it concerns the enforcement of a subpoena Oracle served in *Rimini II*, where the motion to quash was filed in another court and then transferred here pursuant to Federal Rules of Civil Procedure, Rule 45(f). It is not really a separate “case” from *Rimini II*. See ECF No. 298 (Oracle’s notice of related cases).

1 First, Judge Leen has extensive experience over the past six years presiding over this  
 2 action (“*Rimini II*”) and the prior, related case, *Oracle v. Rimini*, Case No. 2:10-cv-00106 (D.  
 3 Nev.) (“*Rimini I*”). Both cases involve complex technical and legal issues, which necessitate  
 4 extensive discovery. For this reason, the parties agreed at the outset of *Rimini II* that  
 5 “assignment of this matter to . . . Magistrate Judge Leen ‘would be likely to effect a savings of  
 6 judicial effort and other economies, and [would] diminish the likelihood of inconsistent results.’”  
 7 ECF No. 48 (Stipulated Discovery Plan & Proposed Scheduling Order).

8 Judge Leen’s many status conferences with the parties and concurrent discovery rulings  
 9 reveal an intimate familiarity with the claims and defenses in this action, as well as an in-depth  
 10 understanding of the basis for prior discovery in both cases. Thus, Judge Leen often referenced  
 11 the parties’ prior discovery disputes and her resolution of them to ensure both efficiency and  
 12 consistency. Based on Judge Leen’s comprehensive knowledge of the case background, the  
 13 parties, salient issues in the case, and prior discovery issues, reassignment of this case would  
 14 promote judicial efficiency and decrease the likelihood of inconsistent rulings.

15 Second, while *Rimini II* has been assigned to Judge Hoffman during Judge Leen’s  
 16 recusal, he has not issued any substantive rulings during Judge Leen’s temporary absence.<sup>3</sup> It  
 17 would be inefficient and a waste of judicial resources for Judge Hoffman to invest the time and  
 18 resources necessary to familiarize himself with the record in this action in view of Judge Leen’s  
 19 extensive experience with it and with the informing record in *Rimini I*.

20 For these reasons, Oracle respectfully requests this matter be reassigned to Judge Leen.<sup>4</sup>

## 21 **II. FACTUAL AND PROCEDURAL BACKGROUND**

22 Magistrate Judge Leen has presided over this action (“*Rimini II*”) and the related case,  
 23 *Oracle v. Rimini*, Case No. 2:10-cv-00106 (D. Nev.) (“*Rimini I*”), for more than six years. On  
 24 May 2, 2016, the Chief Judge entered an order appointing a panel to consider the reappointment  
 25

26 <sup>3</sup> On October 13, 2016, Judge Hoffman set two pending motions to compel in *Rimini II* and  
 Colbeck’s motion to quash for hearing on December 16, 2016.

27 <sup>4</sup> Although the order assigning this case to Judge Hoffman was issued by Chief Judge  
 28 Navarro, Oracle has been advised by the Chief Judge’s Courtroom Administrator that a motion  
 to reassign is properly directed to the District Judge assigned to the case, i.e., the Hon. Larry  
 Hicks.

of Judge Leen (the “Panel”). *See* ECF No. 217. The order appointed W. West Allen, counsel for Rimini and Ravin (collectively, “Rimini”), as the Chairperson of the Panel. *Id.*

Advisory Opinion, No. 97 of the Guide to Judiciary Policy, Committee on Code of Conduct for United States Judges, advises a magistrate judge to recuse herself, subject to remittal under Canon 3D of the Code of Conduct, from any case involving an attorney or a party who is presently a member of her reappointment panel. Accordingly, on May 5, 2016, Judge Leen ordered the parties to file a “statement of whether or not all the parties agree to remittal” of Judge Leen’s disqualification based on Mr. Allen’s membership on the Panel, and ordered that the parties “shall not identify any individual or party who agree or does not agree.” *Id.*

Accordingly, parties submitted a joint statement stating simply that parties were “unable to agree to remittal under Canon 3D” but did not reveal which party or parties disagreed. ECF No. 223. Thus, Judge Leen recused herself, and Magistrate Judge Carl W. Hoffman was appointed on May 17, 2016. *See* ECF Nos. 223-225.

Oracle was advised on October 3, 2016 that the work of the committee assessing Judge Leen’s reappointment was completed, and that the District Court had approved her appointment to a new term. Pocker Decl. ¶ 4. Because there was no longer any reason for recusal, this motion followed.

### **III. LEGAL STANDARD**

Recusal is temporary under Advisory Opinion No. 97. The Advisory Opinion instructs that “recusal would be required only during that period of time when reappointment is under consideration by the panel and court.” Advisory Op. No. 97. Thus, “after reappointment the magistrate judge is not required to recuse” unless some other reason for recusal applies. *Id.*; *see also Newport News Holdings Corp. v. Virtual City Vision, Inc.*, 650 F.3d 423, 433 (4th Cir. 2011) (rejecting argument that counsel’s prior involvement on reappointment committee is grounds for recusal). For example, “in the *unlikely* event that during the selection process something were to occur between a panel member and the magistrate judge that bears directly on the magistrate judge’s ability to be, or to be perceived as being, fair and impartial in any case involving that panel member,” then the magistrate judge would have to evaluate the facts to



determine whether further recusal is warranted. Advisory Op. No. 97 (emphasis supplied).

Continued recusal is only warranted where “the judge’s impartiality might reasonably be questioned.” Canon 3(C)(1) of the Code of Conduct for United States Judges; *see also* 28 U.S.C. § 455(a). This is examined under “an objective standard that asks ‘whether the judge’s impartiality might be questioned by a reasonable, well-informed observer who assesses all the facts and circumstances.’” *Newport News Holdings*, 650 F.3d at 433 (quoting *United States v. DeTemple*, 162 F.3d 279, 286 (4th Cir. 1998)). Thus, “[a] judge is not required to recuse himself merely on the basis of unsupported, irrational, or highly tenuous speculation.” *United States v. Quinones*, No. 2:16-CR-00116, 2016 WL 4413149 (S.D.W. Va. Aug. 16, 2016) (inner quotation and citation omitted). Similarly, “the reasonable observer is not a person unduly suspicious or concerned about a trivial risk that a judge may be biased.” *Id.* (inner quotation and citation omitted).

#### IV. ARGUMENT

Oracle requests this case be reassigned to Judge Leen because Judge Leen already has invested time and energy to learn the record in this case and *Rimini I*, and judicial resources would not be wasted because Judge Hoffman has not yet ruled substantively on any issue in this case during Judge Leen’s temporary absence.

##### A. Judge Leen Has Extensive Experience Adjudicating This Action and *Rimini I*

In this case and *Rimini I*, the parties have proceeded before Judge Hicks and Magistrate Judge Leen for the last six and half years. Accordingly, Judge Leen has gained familiarity with the technologies and issues that are at the core of both cases, and has issued substantive orders regarding the scope and methods of discovery in both cases.

Based upon Oracle’s experience litigating *Rimini I*, Oracle anticipates that *Rimini II* will require similar robust and extensive discovery to provide the basis for a fair trial.<sup>5</sup> In *Rimini I*, Oracle prevailed at trial after “20 months of discovery during which the parties deposed over 50

<sup>5</sup> See, e.g., *Rimini I*, ECF No. 109 (September 21, 2010) (ordering 20 7-hour depositions, 40 interrogatories per side); *id.*, ECF No. 142 (May 19, 2011) (ordering 20 customer depositions); *id.*, ECF No. 163 (September 19, 2011) (ordering four additional depositions of noncustomers and 250 Requests for Admission per side).

1 witnesses, produced documents from over 100 custodians, exchanged hundreds of pages of  
2 written discovery, conducted significant forensic analysis, and spent thousands on hours of  
3 expert analysis.” *Rimini I*, ECF No. 488 at 5-6; *see also id.*, ECF No. 1049 at 19 (“time billed by  
4 [Oracle] counsel was reasonable for such a complex litigation”). Just as *Rimini I*, this matter  
5 involves copyright claims that span a large number of copyright registrations, non-copyright  
6 claims directed at Rimini’s sales activities and provision of support, multiple software product  
7 lines, and hundreds of customers, each of which may represent hundreds of thousands if not  
8 millions of dollars in revenue.

9       The scope of *Rimini II* and the attendant scope of discovery are even broader than in  
10 *Rimini I* because it covers additional product lines and customers. In *Rimini II*, current discovery  
11 already includes: 153 requests for production of documents and 6 interrogatories from Rimini to  
12 Oracle; 210 requests for production of documents and 12 interrogatories from Oracle to Rimini;  
13 51 requests for production of documents from Oracle to Ravin; and over 400 third-party  
14 subpoenas served by the parties.

15       To manage the extensive discovery required by the case, the parties have appeared  
16 numerous times before Judge Leen with disputes regarding the methods and scope of discovery.  
17 Judge Leen has held periodic status conferences since the inception of the case to resolve  
18 substantive disputes between the parties without formal motion practices. *See* ECF No. 100,  
19 Aug. 28, 2015 Hrg. Tr. at 28:4-9 (“I’m going to do what I did in [*Rimini I*], is periodic status and  
20 dispute resolution hearings so that we can move this case and we don’t have to wait for a formal  
21 motion practice to resolve discovery disputes”); ECF No. 147, Jan. 12, 2016 Hrg. Tr. at 43:17-20  
22 (“I’m going to continue to hold status conferences every 30 days.”). Prior to each status  
23 conference, the parties submitted joint status reports apprising Judge Leen of discovery progress  
24 and pending disputes, including motions to compel and oppositions to those motions. Both sides  
25 frequently relied upon prior discovery that was the subject of Judge Leen’s guidance in *Rimini I*.  
26 They then appeared before Judge Leen to discuss the issues raised in the joint status reports and  
27 seek resolution of them.

28       The status conferences informed Judge Leen’s discovery orders and covered a wide range

1 of issues. *See, e.g.*, ECF Nos. 93 (Minutes of July 13, 2015 Conference) (discussing various  
 2 aspects of discovery plan); 123 (Dec. 15, 2015 Hrg. Tr. 34:12-21) (stating inclination to rule  
 3 based on the parties’ oral presentations and Judge Leen’s knowledge of discovery produced to  
 4 date). The parties provided substantive updates on the latest developments in their discovery  
 5 exchanges, and – after hearing the parties’ respective positions – Judge Leen ruled on the  
 6 pending disputes between them. *See, e.g.*, ECF Nos. 148 (Minutes of Jan. 12, 2016 Status  
 7 Conference); 179 (Minutes of Feb. 24, 2016 Status Conference); 200 (Minutes of April 5, 2016  
 8 Status Conference).

9 Many of Judge Leen’s rulings are explicitly informed by her knowledge and expertise  
 10 regarding discovery in *Rimini I*. At the October 26, 2016 Status Conference, for example, Judge  
 11 Leen ruled on Rimini’s motions to compel disclosure of information regarding non-Rimini  
 12 customers and limited discovery to documents regarding Rimini’s customers in part based upon  
 13 consideration of the scope of discovery and the verdict in *Rimini I*. *See* ECF No. 112 (Oct. 26,  
 14 2016 Hrg. Tr.) at 11:11-14 (“we would like to do in this case what we did in the first case, which  
 15 is that we would search for and produce documents concerning Rimini’s customers”); *see also*  
 16 *id.* at 13:4-8; 13:24-14:3; 17:24-19:11; 29:20-34:25. Likewise, Judge Leen ruled on Rimini’s  
 17 motion for protective order limiting the number of third-party subpoenas, based on positions  
 18 Rimini took in the *Rimini I* trial, noting that Rimini “defended *Rimini I* pointing out that [Oracle]  
 19 didn’t ask every single customer that [Rimini] had and, as a result, this a proof issue . . . if  
 20 [Rimini] is going to argue that they need to know the answer for every customer, then [Oracle is]  
 21 going to contact every customer.” ECF No. 170 (Feb. 24, 2016 Hrg. Tr.) at 36:10-17; *see also*  
 22 *id.* at 49:13-50:4; 99:6-9.

23 The parties agreed at the outset that “assignment of this matter to . . . Magistrate Judge  
 24 Leen ‘would be likely to effect a savings of judicial effort and other economies, and [would]  
 25 diminish the likelihood of inconsistent results.’” ECF No. 48 (Stipulated Discovery Plan &  
 26 Proposed Scheduling Order). That rationale has not changed; reassignment of this case (and  
 27 *Rimini I*) to Judge Leen would serve the convenience of the parties and would promote overall  
 28 judicial efficiency.

1           **B.     Transferring The Case Back To Judge Leen Will Not Result In Waste Or**  
 2           **Inefficiency**

3           Since his appointment in the case, Judge Hoffman has entered six orders – a stipulation  
 4           and proposed order entering a revised case schedule overseen by Judge Leen in a prior hearing  
 5           (ECF No. 227), and various orders on motions to seal (ECF Nos. 240, 380, 281, 282, 287).

6           Although the parties have briefed two motions to compel, those motions are still pending.

7           In view of Judge Hoffman’s limited tenure on the case, the absence of any substantive  
 8           rulings, and the Advisory Opinion’s directive that recusal be required only during the period of  
 9           time when reappointment is under consideration, Oracle respectfully requests the matter be  
 10          reassigned to Judge Leen.

11           **C.     There Is No Lack Of Impartiality That Would Warrant Permanent**  
 12           **Disqualification**

13          Finally, there is no evidence – indeed, no suggestion – that Judge Leen has any biases  
 14          toward any party or that she lacks impartiality. As part of the reappointment process, the panel  
 15          “reviews the incumbent’s performance in office as a magistrate judge.” *See* Administrative  
 16          Office of the United States Court, THE SELECTION, APPOINTMENT, AND REAPPOINTMENT OF  
 17          UNITED STATES MAGISTRATE JUDGES, at 39. Judge Leen’s recent reappointment confirms that  
 18          after careful review, she meets all qualifications, including “[f]airness and commitment to equal  
 19          justice for all people,” “[i]mmunity from undue influence,” and a “[r]eputation for proprietary  
 20          and integrity.” *Id.* at 27.

21          Moreover, Oracle is not aware of any event or action during the selection process which  
 22          would call into question Judge Leen’s impartiality. The applicable rules clearly anticipate that  
 23          the matter would be reassigned to Judge Leen once her reappointment was confirmed in  
 24          accordance with Advisory Opinion No. 97. *See* ECF Nos. 241 at n. 1; 256 at 3. There is,  
 25          therefore, no indication that Judge Leen’s “impartiality might reasonably be questioned” as a  
 26          result of her temporary recusal from this matter. Canon 3(C)(1) of the Code of Conduct for  
 27          United States Judges; *see also* 28 U.S.C. § 455(a).

28           **V.     CONCLUSION**

          Considering (i) Judge Leen’s extensive experience resolving issues both broad and

1 intricate in this action and in *Rimini I*, (ii) that there have been no rulings of substance by  
2 Magistrate Judge Hoffman in this matter over his brief tenure, (iii) the Advisory Opinion's  
3 directive that recusal be required only during the period of time when reappointment is under  
4 consideration, and (iv) the absence of any basis upon which to assert – much less establish – that  
5 Judge Leen has exhibited bias or lacks impartiality, Oracle respectfully requests that this case  
6 and *Rimini I* be reassigned to Judge Leen.

7 DATED: October 19, 2016

MORGAN, LEWIS & BOCKIUS LLP

8  
9  
10 By: /s/ Thomas S. Hixson

11 Attorneys for Counterclaimant Oracle America,  
12 Inc. and Defendant and Counterclaimant Oracle  
13 International Corporation  
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**CERTIFICATE OF SERVICE**

I certify that on October 19, 2016, I electronically transmitted the foregoing ORACLE'S MOTION FOR REASSIGNMENT OF MATTERS TO JUDGE PEGGY A. LEEN AND MEMORANDUM OF POINTS AND AUTHORITIES to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel are CM/ECF registrants.

DATED: October 19, 2016

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Thomas S. Hixson

Attorneys for Counterclaimant Oracle America,  
Inc. and Defendant and Counterclaimant Oracle  
International Corporation

BOIES, SCHILLER & FLEXNER LLP  
 RICHARD J. POCKER (NV Bar No. 3568)  
 300 South Fourth Street, Suite 800  
 Las Vegas, NV 89101  
 Telephone: 702.382.7300  
 Facsimile: 702.382.2755  
 rpocker@bsflp.com

BOIES, SCHILLER & FLEXNER LLP  
 STEVEN C. HOLTZMAN (*pro hac vice*)  
 BEKO O. REBLITZ-RICHARDSON  
 (*pro hac vice*)  
 1999 Harrison Street, Suite 900  
 Oakland, CA 94612  
 Telephone: 510.874.1000  
 Facsimile: 510.874.1460  
 sholtzman@bsflp.com  
 brichardson@bsflp.com

Attorneys for Counterclaimant Oracle  
 America, Inc. and Defendant and  
 Counterclaimant Oracle International Corp.

MORGAN, LEWIS & BOCKIUS LLP  
 THOMAS S. HIXSON (*pro hac vice*)  
 JOHN A. POLITO (*pro hac vice*)  
 NITIN JINDAL (*pro hac vice*)  
 One Market, Spear Street Tower  
 San Francisco, CA 94105  
 Telephone: 415.442.1000  
 Facsimile: 415.442.1001  
 thomas.hixson@morganlewis.com  
 john.polito@morganlewis.com  
 nitin.jindal@morganlewis.com

DORIAN DALEY (*pro hac vice*)  
 DEBORAH K. MILLER (*pro hac vice*)  
 JAMES C. MAROULIS (*pro hac vice*)  
 ORACLE CORPORATION  
 500 Oracle Parkway, M/S 5op7  
 Redwood City, CA 94070  
 Telephone: 650.506.4846  
 Facsimile: 650.506.7114  
 dorian.daley@oracle.com  
 deborah.miller@oracle.com  
 jim.maroulis@oracle.com

UNITED STATES DISTRICT COURT  
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 RIMINI STREET, INC. and SETH RAVIN,  
 Defendants.

Case No. 2:14-cv-01699-LRH-CWH

**DECLARATION OF RICHARD  
 POCKER IN SUPPORT OF  
 ORACLE'S MOTION FOR  
 REASSIGNMENT OF MATTERS TO  
 MAGISTRATE JUDGE PEGGY A.  
 LEEN**

**Case No. 3:16-CV-00543-LRH-CWH**  
  
COLBECK CAPITAL MANAGEMENT,  
  
Third-Party Movant,  
  
v.  
  
ORACLE INTERNATIONAL CORPORATION  
and ORACLE AMERICA, INC.,  
  
Respondents.



1 I, Richard J. Pocker, have personal knowledge of the facts stated below and hereby  
2 declare:

3 1. I make this declaration based on personal knowledge, and based on the record of  
4 this litigation, in support of Oracle's Motion For Reassignment Of Matters To Magistrate Judge  
5 Peggy A. Leen.

6 2. I am a partner at Boies, Schiller & Flexner LLP and counsel for Counterclaimant  
7 Oracle America, Inc. and Defendant and Counterclaimant Oracle International Corp. in this  
8 action ("*Rimini II*").

9 3. I am also counsel for Plaintiffs Oracle USA, Inc., Oracle America, Inc., and  
10 Oracle International Corp. in the related matter *Oracle v. Rimini*, Case No. 2:10-cv-0106-LRH-  
11 VCF (D. Nev.) ("*Rimini I*"), and Respondents Oracle America, Inc. and Oracle International  
12 Corp. in the related matter, *Colbeck v. Oracle*, Case No. 3:16-cv-00543-LRH-CWH (D. Nev.)  
13 ("*Colbeck's Motion to Quash*").

14 4. On October 3, 2016, I spoke with Lance Wilson the Court Executive for the  
15 District of Nevada, who advised me that the committee considering Judge Leen's reappointment  
16 had completed its work and report, and that the District Court had approved Judge Leen's  
17 appointment to a new term, to commence at the end of her present term. I inquired as to whether  
18 there was a publicly filed order or document to that effect, but Mr. Wilson said he was not aware  
19 of one. He stated that I could just reference the information that he had provided in support of  
20 that fact.

21 I declare under penalty of perjury under the laws of the United States that the foregoing is  
22 true and correct.

23 DATED: October 19, 2016

BOIES, SCHILLER & FLEXNER LLP

26 By: /s/ Richard J. Pocker

27 Richard J. Pocker